

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GERALD FLANAGAN	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
CREATIVE PLAYTHINGS, LTD.,	:	
et al.	:	No. 03-4476

MEMORANDUM and ORDER

McLaughlin, J.

October ____, 2003

The question before the Court is whether the notice of removal filed by the defendants in this case was proper under 28 U.S.C. § 1441. The answer to this question depends on whether the praecipe, civil cover sheet, and entry of appearance filed on July 7, 2003 ("praecipe documents") provided the defendants with notice of federal jurisdiction. Because I find that these documents did not establish the presence of federal jurisdiction, I will grant the plaintiff's motion to remand.

The plaintiff, Gerald Flanagan, commenced this action against Creative Playthings, Ltd. ("Creative Playthings"), Donald E. Hoffman ("Hoffman"), and Peter W. Kakridas ("Kakridas") by filing a praecipe for writ of summons in the Court of Common Pleas of Delaware County, Pennsylvania on July 7, 2003. The praecipe was served upon the defendants on or about July 14, 2003. On August 1, 2003, the defendants filed a notice of

removal in this court.

The praecipe documents provided the following information: the name of the plaintiff and the defendants; the address of the plaintiff in West Chester, Pennsylvania; the addresses of Creative Playthings and Hoffman in Framingham, Massachusetts; the address of Kakridas in West Chester, Pennsylvania; and the type of case as employment/wrongful discharge to be tried by jury.¹

The defendants' notice of removal stated that Kakridas was and is a resident and citizen of Massachusetts. Defendants maintained that the address listed for him on the plaintiff's civil cover sheet in West Chester, Pennsylvania, is the business address of a Creative Playthings retail store.

This Court addressed the standard for determining whether a pleading and its accompanying documents set forth a basis for federal jurisdiction in Davis v. Motiva Enters., L.L.C., No. 02-3852, (E.D. Pa. Sept. 26, 2002). This Court noted that the Court of Appeals for the Third Circuit decided this issue in Foster v. Mutual Fire, Marine and Inland Ins. Co., 986 F.2d 48 (3d Cir. 1993). To determine whether a pleading and its accompanying documents set forth a basis for federal

¹The defendants argue that the check mark next to "jury trial" indicates that the plaintiff's claim is in excess of \$50,000. The "arbitration" category, which lists \$0-50,000, is not checked.

jurisdiction, "the relevant test is not what the defendants purportedly knew, but what the documents said." Id. at 54. "The inquiry begins and ends with the four corners of the pleading. The inquiry is succinct: whether the document informs the reader, to a substantial degree of specificity, whether all the elements of federal jurisdiction are present." Id. at 53.

To be considered in this inquiry, documents must, "at a minimum, . . . be something of a type filed with the court." Id. at 54. The defendants argue that a letter from plaintiff's former counsel to Creative Playthings demanding a sum of \$360,000 provided the defendants with knowledge that the plaintiff's claim exceeded the sum or value of \$75,000. The defendants also argue that because they had knowledge of the plaintiff's salary at the time of his employment termination and the praecipe documents indicated that the lawsuit concerned "Employment/Wrongful Discharge," they had knowledge that the claim exceeded \$75,000. This Court, however, cannot consider the letter from plaintiff's counsel or the defendants' knowledge of the plaintiff's salary. Id.

I must look to the documents to determine whether they inform the reader "to a substantial degree of specificity" that there was diversity of citizenship and more than \$75,000 in controversy.

Accepting the Defendants' claim that diversity exists

because all defendants reside in Massachusetts, the Court cannot find that the praecipe documents show that more than \$75,000 is in controversy. The defendants' only argument that the praecipe documents show that the plaintiff's claim exceeds the jurisdictional amount is that the mark next to jury trial on the civil cover sheet indicates that the plaintiff's claim is in excess of \$50,000.

Assuming that a reader would know that a jury trial case has more than \$50,000 in controversy, this Court does not find that a reader would know that there is more than \$75,000 in controversy.

The defendants rely on a case that holds that a summons stating that the amount in controversy exceeds \$50,000 is sufficient to notify the defendants that diversity jurisdiction exists. McPherson v. Peelle Co. and Millar Elevator Service Co., 1995 U.S. Dist. LEXIS 1619, at *10 (E.D. Pa. Feb. 7, 1995). This case, however, was decided before October 19, 1996, when the amount in controversy increased from \$50,000 to \$75,000. 28 U.S.C. § 1332 (2003), amended by 28 U.S.C. § 1332 (1996). The plaintiff in McPherson explicitly stated that the amount in controversy exceeded the statutory requirement.

Defendants also cite Davidson v. National Railroad Passenger Corp., 2000 U.S. Dist. LEXIS 8707, at *8 (E.D. Pa. June 9, 2000), for the proposition that a praecipe providing the names

of the parties, the identification of the matter as a potential premises liability issue, and the assertion that the amount in controversy exceeds \$50,000 is sufficient to place the defendant on notice of federal jurisdiction. However, Davidson actually held that the defendant had notice of federal jurisdiction because Amtrak was named as a defendant, and Amtrak was a federally-owned corporation. The amount in controversy was not at issue in this case.

For these reasons, the Court holds that the praecipe documents did not inform the defendants to a substantial degree of specificity that there was in controversy an amount exceeding \$75,000 exclusive of interest and costs. They, therefore, did not provide adequate notice to the defendants of federal jurisdiction. Thus, the defendants' removal was premature and the Court will remand the case to the Delaware County Court of Common Pleas, Pennsylvania.

The plaintiff also requests the Court to award the plaintiff attorney's fees and costs incurred in responding to the defendants' notice of removal pursuant to 28 U.S.C. § 1447(c). Attorney's fees and costs are generally awarded only in the limited situations where nonremovability is obvious or where a defendant did not act in good faith. Davidson, 2000 U.S. Dist. LEXIS, at *11 (citing Landman v. Borough of Bristol, et al., 896 F.Supp. 406, 409 (E.D. Pa. 1995)). The Third Circuit has noted

the difficulties defendants face when they decide whether to exercise their statutory right to removal. See Foster, 986 F.2d at 52-53. Since many uncertainties surround removal, and the defendants' removal was not in bad faith, this Court will deny the plaintiff's request for attorney's fees and costs.

An appropriate order follows.

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ORDER

AND NOW, this _____ day of October, 2003, upon consideration of Plaintiff's Motion for Remand (Docket #2) and the Defendants' Opposition to Plaintiff's Motion to Remand (Docket #3), IT IS HEREBY ORDERED that the Plaintiff's Motion to Remand is GRANTED for the reasons given in a memorandum of today's date. This case is hereby remanded to the Court of

Common Pleas of Delaware County, Pennsylvania, under Docket No.
03-7054. Plaintiff's request for attorney's fees and costs
incurred in responding to the Defendants' Notice of Removal is
DENIED.

BY THE COURT:

MARY A. MCLAUGHLIN, J.